

WASHINGTON, DC – Today, Rep. Pete Stark (D-CA) addressed the Senate Government Affairs Committee on the growing problem of child custody relinquishment in which many parents are forced to give up custody of their mentally ill or emotionally disturbed child in order to get them needed mental health treatment. Last year, Senator Susan Collins (R-ME) and Rep. Patrick Kennedy (D-RI) joined Rep. Stark in requesting that the General Accounting Office investigate this phenomenon that is tearing families apart. The following is Rep. Stark's testimony:

"Thank you, Chairwoman Collins and the other members of the Senate Committee on Government Affairs for organizing this hearing and inviting me to speak today about this very serious problem. Parents should never be forced to relinquish custody of their children in order for their children to receive needed mental health services, but it is happening all too often today.

"This is not an isolated problem. It is found throughout the country and in families at all income levels. A recent General Accounting Office (GAO) report surveying 19 states and 30 counties found that in fiscal year 2001, parents placed over 12,700 children into the child welfare system or juvenile justice system so these children could receive mental health services. The number of these children nationally is obviously much higher. Similarly, a recent survey conducted by the National Alliance for the Mentally Ill (NAMI) found that 25% of parents of children with serious emotional disturbance reported being advised to give up custody of their child to access needed mental health services.

"We have known about this problem for many years. In fact, I first introduced legislation in 1995 attempting to address this issue. Since then I have been working with my colleagues to educate the public and other members of Congress about this issue and to find bipartisan means to solving it.

"Often, I describe the lack of adequate mental health coverage as the disease that has caused the problem of parents being forced to relinquish custody of their children to get them mental health treatment and related services.

"The act of giving up children to the custody of the juvenile justice and child welfare system is the horrible symptom of the disease. Both these systems are ill equipped to meet the needs of

these children. Furthermore, the psychological bond between parent and child is unnecessarily disrupted by this act of relinquishing custody. These children feel abandoned and their parents feel guilty over relinquishing decision-making authority and control to the state agency.

“The juvenile justice and child welfare systems have become the mental health providers of last resort. In desperation, families who have exhausted all available resources go to juvenile court and file neglect charges or declare their child in need of supervision. Or, they approach the local child welfare system and request relief and assistance due to their inability to handle their child’s emotional problems.

“A Bazelon Center report highlighted the situations that cause parents and guardians to give up their seriously emotionally disturbed children to state agencies to obtain needed in-home, community based or residential mental health services. These included:

- The family has either exhausted their private health insurance benefits or their benefits do not cover required mental health services (e.g. Residential Treatment Program)
- The family lives in a state or jurisdiction in which Medicaid services do not adequately address mental health needs and agency placement provides access or priority status for entry into needed care..
- The family lives in a state or jurisdiction in which children are deprived of federally mandated mental health services through the Individuals with Disabilities Act (IDEA) as a result of an exceedingly restrictive definition of serious emotional illness. That is, these schools often label these children as solely “discipline problems.”
- The family lives in a state or jurisdiction in which the local child welfare system erroneously interprets federal law (Title IV-E of the Foster Care and Adoption Assistance Program) as requiring relinquish of custody even for temporary out-of-home placements.

“What these children need is quality mental health treatment without being ripped out of the arms of their families.

“Thankfully, States have started to take action. So far, 13 states have passed laws to prevent custody relinquishment as a requirement for accessing needed mental health services. This form of legislation is needed throughout the nation. Also, a number of states are attempting to address the problem by increasing accessibility to mental health services for these children through the use of “voluntary placement agreements,” Medicaid “Katie Beckett” and 1915 (c) Home and Community Based Services Waivers, and various statutory modifications.

Finally, a number of states and local communities have taken advantage of grants through the Comprehensive Community Mental Health Services for Children and Their Families Program. This matching grant program, administered through the Center of Mental Health Services, has demonstrated that systems of care can increase access to needed mental health services and increase the amount of effective in-home and community-based interventions. We need to build upon this model and encourage all states to develop the infrastructure to provide state-wide systems of care so that these children have access to a full array of in-patient, community-based and residential mental health services and can receive the most appropriate treatment in the least restrictive setting.

“I am pleased to report that Chairwoman Collins, Representative Kennedy and I are working together to develop a bill to help the states in this regard. Of course we all know that the biggest barrier facing states these days is adequate funding. Recognizing that fact, our legislation will create a new federal grant program to provide funds to states that choose to develop systems of care to eliminate the practice of parents being forced to relinquish custody of their children in order to secure needed mental health care. Priority would be given to those states that have a history of developing local and statewide systems of care and have already taken steps to broaden access to community-based services for children with serious emotional disturbance.

“Our bill also calls for the Secretary of Health and Human Services to provide technical assistance to the states, establish a means of measuring the success of each state’s intervention and report these results back to Congress. We are working with advocates, states, and other interested parties to finalize our legislation. We hope to introduce it before Congress leaves for the August recess. Our bill isn’t the final solution, but it moves us forward in partnership with the states to find solutions to this barbaric practice.

“Chairwoman Collins, I thank you for holding this important hearing. I am hopeful that it will help publicize this terrible plight of far too many families throughout the nation and help generate interest in finding solutions to this unnecessary and harmful situation.”